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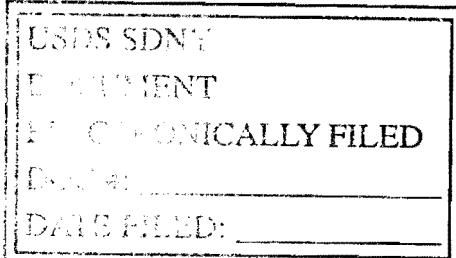
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(1937-2005)



August 19, 2011

Via UPS Next Day Air

Honorable Kenneth M. Karas

United States District Judge

Southern District of New York

United States Courthouse

300 Quarropas Street, Chambers 533

White Plains, NY 10601

RE: Deskovic v. City of Peekskill, et al., 07-CV-8150 (KMK)(GAY)

McGarr v. City of Peekskill, et al., 07-CV-9488(KMK)(GAY)

Dear Judge Karas,

I write on behalf of Plaintiff Jeffrey Deskovic in response to the August 16, 2011 letter from Defendant City of Peekskill's insurance coverage counsel requesting a pre-motion conference addressing the City's request to file a motion to implead its liability insurance companies. Plaintiff respectfully suggests that a pre-motion conference and motion may be unnecessary under these circumstances, and requests that the Court consider granting Defendants permission to implead these third-party defendants at this time.

It is our understanding that all parties to the *Deskovic* and *McGarr* actions consent to the filing of the third-party complaint impleading Peekskill's insurers: the ultimate relief sought by Peekskill after its requested pre-motion conference and motion. While the prospective third-party defendants may object, they are not entitled to notice or an opportunity to be heard before any such complaint is filed. *See Gross v. Hanover Ins. Co.*, 138 F.R.D. 53, 55 n.3 (S.D.N.Y. 1991). Thus, both during any pre-motion conference and in any subsequent briefing on a motion to implead, Peekskill's requests will be unopposed.

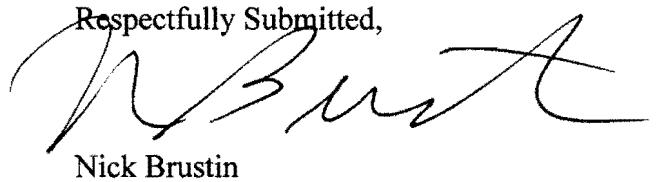
As the Court is aware, we are currently in the middle of a summary judgment briefing schedule: Defendant Tumolo served his motion for summary judgment on August 5, 2011;

Defendants Peekskill, Levine and McIntyre's Rule 56.1 statements were served August 18, 2011, and their motions are due to be served by August 25, 2011; and Plaintiffs' opposition to all motions is due by the end of October, 2011.

In the meantime, Plaintiffs and the Peekskill Defendants have agreed to pursue mediation, and to seek a two-month stay from this Court pending the resolution of that process.¹ Plaintiff is currently prepared to file a consent motion seeking court-ordered mediation—to include participation of Plaintiffs, the Peekskill Defendants, and Peekskill's insurers—as well as a stay of the proceedings against the Peekskill Defendants. However, at Peekskill's request, Plaintiff has delayed filing this motion until the insurers are impleaded into this action.

It is for this reason that Plaintiff respectfully requests that the Court consider deviating from its usual practice of requiring a pre-motion conference. In the alternative, Plaintiff respectfully requests the Court consider a conference at the Court's earliest convenience to address this issue.

Respectfully Submitted,



Nick Brustein

CC (via email):

In light of the Parties' concurrence,
the Court grants the request of the
City of Peekskill to implead the liability
insurance companies. Peekskill is to do
this by September 9, 2011.

So Ordered -


8/24/11

¹ Plaintiff does not believe it would be productive to engage in mediation with Defendants Stephens or Putnam County at this time, and does not intend to request any stay of the proceedings against those defendants.

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